

WHEREAS, on or about September 13, 2005, Defendants asserted affirmative defenses and counterclaims (the "Counterclaims") against Lucky Brand Parties alleging that Marcel Fashion is the senior user of the trademark GET LUCKY based on its continuous use in commerce of the GET LUCKY trademark on apparel throughout the entire United States since 1985 and based on U.S. Trademark Registration Nos. 1,377,345 and 2,765,974 and asserting the following claims: Count I - Federal Trademark Infringement, Forward Confusion, under 15 U.S.C. § 1114; Count II - Federal Trademark Infringement, Reverse Confusion, under 15 U.S.C. § 1114; Count III - Federal Unfair Competition under 15 U.S.C. § 1125(a); Count IV - Common Law Unfair Competition; Count V - Violation of New York General Business Law § 349; Count VI - Breach of the May, 2003 Settlement Agreement; and Common Law Trademark Infringement.

WHEREAS, on or about January 2, 2007, Lucky Brand Parties asserted affirmative defenses to Defendants' counterclaims.

WHEREAS, on April 22, 2009, the Court granted partial summary judgment to Defendants that Lucky Brand Dungarees and Liz Claiborne committed federal trademark infringement under 15 U.S.C. § 1114, federal unfair competition under 15 U.S.C. § 1125(a), committed trademark infringement and unfair competition under New York law, and committed deceptive business practices under New York General Business Law § 349 by its sales and offers for sale of men's t-shirts, women's t-shirts and women's long sleeved shirts bearing Marcel Fashion's GET LUCKY trademark.

WHEREAS, on April 22, 2009, the Court granted a permanent injunction against Lucky Brand Parties forbidding them from ever "using in commerce any reproduction,

counterfeit, copy or any colorable imitation of Marcel Fashion's GET LUCKY trademark on or in connection with men's and women's apparel, fragrances, and accessories."

WHEREAS, on April 22, 2009, the Court granted partial summary judgment to Defendants that Lucky Brand Parties breached the terms of the 2003 Settlement Agreement with Marcel Fashion by their sale and offers for sale of men's and women's t-shirts and women's long sleeved shirts bearing Marcel Fashion's GET LUCKY trademark, and their use of Marcel Fashion's GET LUCKY trademark in national perfume advertisements.

WHEREAS, the trial of the parties' remaining claims and defenses was commenced on April 14, 2010 before the Court and a jury.

WHEREAS, on April 21, 2010, the Court dismissed all of Lucky Brand Parties' claims against Ezra Mizrachi and Key Apparel for the reasons stated on the record.

WHEREAS, on April 19, 2010, the Court dismissed Lucky Brand Parties' federal and state dilution claims, Claims Three and Four, for the reasons stated on the record.

WHEREAS, on April 15, 2010, the Court dismissed Lucky Brand Parties' claims of contributory infringement against Marcel Fashion for the reasons stated on the record.

WHEREAS, on April 19, 2010, Lucky Brand Parties withdrew and the Court dismissed their Fifth Claim - Violation of New York General Business Law § 349.

WHEREAS, on April 20, 2010, Lucky Brand Parties withdrew and the Court dismissed their Abandonment defense with regard to Marcel Fashion's GET LUCKY trademark.

WHEREAS, on April 19, 2010, Defendants withdrew and the Court dismissed Counterclaim Count V - Violation of New York General Business Law § 349.

WHEREAS, on April 21, 2010, Defendants withdrew and the Court dismissed Counterclaim Count I - Federal Trademark Infringement, Forward Confusion, under 15 U.S.C. § 1114.

WHEREAS, on April 21, 2010, the Court dismissed Counterclaim Count VI - Breach of the May, 2003 Settlement Agreement for the reasons stated on the record.

WHEREAS, Lucky Brand Parties narrowed their allegations of infringement from all of the Lucky-related trademarks listed in Plaintiffs' Exhibit 122 to the following trademarks: 122-A4 (Reg. No. 1,646,123), 122-A13 (Reg. No. 2,330,052), 122-A14 (Reg. No. 2,381,638), 122-A21 (Reg. No. 2,383,437), 122-A26 (Reg. No. 2,306,342), 122-A28 (Reg. No. 3,107,591), 122-A30 (Reg. No. 2,158,107), 122-A34 (Reg. No. 2,469,997), 122-A37 (Reg. No. 1,739,962), 122-A15 (Reg. No. 2,400,358), 122-A18 (Reg. No. 2,129,881), and 122-A29 (Reg. No. 2,686,829) (all of which are attached hereto as Exhibit 1), and on April 21, 2010, the Court dismissed all claims related to infringement of 122-A15, 122-A18, and 122-A29 for the reasons stated on the record.

WHEREAS, on April 19, 2010, the Court ruled that Lucky Brand is the owner of the aforementioned registered trademarks, that they are valid and enforceable, and that they are inherently distinctive and not generically descriptive or requiring secondary meaning.

WHEREAS, on April 19, 2010, the Court ruled that Marcel Fashion is the owner of the GET LUCKY trademark Reg. No. 1,377,345 (later canceled) and Reg. No. 2,765,974 (attached hereto as Exhibit 2), that the GET LUCKY trademark is valid and enforceable, that the mark is inherently distinctive and not generically descriptive or requiring secondary meaning, that Marcel Fashion did not abandon the mark, and that Marcel Fashion's GET LUCKY

trademark number Reg. No. 1,377,345 was registered and used prior to Lucky Brand's use and registration of any of the marks in Plaintiffs' Exhibit 122.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The above rulings, withdrawals and dismissals are made with prejudice and all of the above are hereby incorporated into and made part of this Final Order and Judgment.

2. Ally's use of GET LUCKY as licensed from Marcel Fashion constitutes willful infringement of Lucky Brand Parties' 122-A4 and 122-A13 trademarks pursuant to Lucky Brand Parties' First, Second and Sixth Claims, but Defendant Marcel Fashion established its prior ownership, registration (Reg. No. 1,377,345) and use of GET LUCKY throughout the entire United States, and that since its first use in 1985 it never abandoned the GET LUCKY trademark, which, pursuant to 15 U.S.C. § 1115(b)(6) and common law, provides a complete defense to all claims of infringement and establishes priority over Lucky Brand Parties' trademarks.

3. Ally's use of GET LUCKY as licensed from Marcel Fashion does not constitute infringement of Lucky Brand Parties' 122-A4 and 122-A13 marks under Lucky Brand Parties' Seventh Claim for common law unfair competition.

4. Ally's use of GET LUCKY as licensed from Marcel Fashion does not constitute infringement of any trademark rights with respect to Lucky Brand Parties' 122-A14, 122-A21, 122-A26, 122-A28, 122-A30, 122-A34, 122-A37 trademarks.

5. Lucky Brand Parties infringed Marcel Fashion's GET LUCKY trademark (Reg. No. 2,765,974) pursuant to Counterclaim II (Reverse Confusion), Counterclaim III (Federal Unfair Competition) and Counterclaim VII (Common Law Trademark Infringement) by

using GET LUCKY, the LUCKY BRAND trademarks, and any other trademarks including the word "Lucky" after May 2003.

6. For Lucky Brand Parties' infringement of Marcel Fashion's GET LUCKY trademark on men's and women's t-shirts and on women's long sleeved shirts, and for their breach of the settlement agreement by using GET LUCKY in connection with fragrance advertising, Marcel Fashion is awarded \$10,000 in compensatory damages, and \$140,000 in punitive damages.

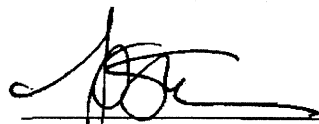
7. For Lucky Brand Parties' infringement of Marcel Fashion's GET LUCKY trademark by their use of GET LUCKY, the LUCKY BRAND trademarks and any other marks including the word "Lucky" after May 2003, Marcel Fashion is awarded \$10,000 in compensatory damages, and \$140,000 in punitive damages.

8. Lucky Brand Parties shall pay to Marcel Fashion the \$300,000 in damages within seven business days of the parties' joint submission of this order to the Court (by May 24, 2010).

9. The parties have jointly drafted this order and agree to waive any and all rights pursuant to Federal Rules of Civil Procedure 59 and 60. The parties further agree to waive any and all rights to appeal this order.

Dated: New York, New York
May 28, 2010

SO ORDERED.



Laura Taylor Swain (U.S.D.J.)

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

EXHIBIT 1

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,383,437

United States Patent and Trademark Office

Registered Sep. 5, 2000

**TRADEMARK
PRINCIPAL REGISTER**

WEAR US

BE LUCKY

LUCKY BRAND DUNGAREES, INC. (CALIFORNIA CORPORATION)
4599 DISTRICT BOULEVARD
VERNON, CA 90058

FOR: CLOTHING, NAMELY, SHIRTS, BLOUSES, T-SHIRTS, TANK TOPS, TOPS, VESTS, SWEATERS, DRESSES, SKIRTS, JUMPERS, JUMPSUITS, ROMPERS, OVERALLS, COVERALLS, JACKETS, BOXER SHORTS, PANTS, JEANS, SHORTS, LEGGINGS, BOTTOMS, SWEATSHIRTS, SWEAT PANTS, SWEAT SUITS, JOGGING SUITS, COATS, RAIN COATS,

SLEEPWEAR, SOCKS, BELTS, BANDANNAS, SWIM WEAR, BEACH COVERUPS, ROBES, LINGERIE, HATS, CAPS, VISORS, SHOES, SNEAKERS, SANDALS, AND BOOTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-7-1990, IN COMMERCE 12-7-1990.
OWNER OF U.S. REG. NOS. 1,646,123, 1,330,052 AND OTHERS.

SER. NO. 75-849,657, FILED 11-10-1999.

HENRY S. ZAK, EXAMINING ATTORNEY



LUCKY 001145

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,306,342

United States Patent and Trademark Office

Registered Jan. 4, 2000

**TRADEMARK
PRINCIPAL REGISTER**

LUCKY YOU

LUCKY BRAND DUNGAREES, INC. (CALIFORNIA CORPORATION)
4529 DISTRICT BOULEVARD
VERNON, CA 90058

FOR: CLOTHING, NAMELY SHIRTS, BLOUSES, T-SHIRTS, TANK TOPS, TOPS, VESTS, SWEATERS, DRESSES, SKIRTS, JUMPERS, JUMPSUITS, ROMPERS, OVERALLS, JACKETS, BLAZERS, SPORT COATS, BOXER SHORTS, PANTS, JEANS, SHORTS, LEGGINGS, BOTTOMS, SWEATSHIRTS, SWEATSUITS,

JOGGING SUITS, SLEEPWEAR, SOCKS, BANDANNAS, SWIMWEAR, HATS, CAPS, SNEAKERS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-12-1990; IN COMMERCE 12-12-1990.

OWNER OF U.S. REG. NOS. 1,646,123, 1,739,962, AND 1,886,118.

SN 75-117,086, FILED 6-11-1996.

KADHIKA RAJU, EXAMINING ATTORNEY



LUCKY 001419

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office **Reg. No. 1,646,123**
Registered May 28, 1991

**TRADEMARK
PRINCIPAL REGISTER**

LUCKY BRAND

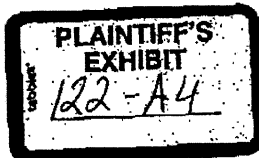
MONTESANO, GENE (UNITED STATES CITI-
ZEN)
935 EAST 12TH STREET
LOS ANGELES, CA 90021

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BRAND", APART FROM THE
MARK AS SHOWN.

FOR: MEN'S JEANS AND SHIRTS, IN CLASS
25 (U.S. CL. 39).
FIRST USE 6-5-1990; IN COMMERCE
6-5-1990.

SER. NO. 74-082,798, FILED 7-30-1990.

LESLEY LAMOTHE, EXAMINING ATTORNEY



LUCKY 000168

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,381,638

United States Patent and Trademark Office

Registered Aug. 29, 2000

**TRADEMARK
PRINCIPAL REGISTER**



LUCKY BRAND DUNGAREES, INC. (CALIFORNIA CORPORATION)
4599 DISTRICT BOULEVARD
VERNON, CA 90058

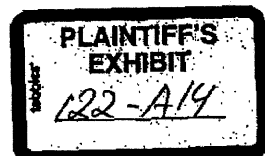
FOR: CLOTHING, NAMELY, SHIRTS, BLOUSES, T-SHIRTS, TANK TOPS, TOPS, VESTS, SWEATERS, DRESSES, SKIRTS, JUMPEKS, JUMPSUITS, ROMPERS, OVERALLS, COVERALLS, JACKETS, BOXER SHORTS, PANTS, JEANS, SHORTS, LEGGINGS, BOTTOMS, SWEATSHIRTS, SWEAT PANTS, SWEAT SUITS, JOGGING SUITS, COATS, RAIN COATS,

SLEEPWEAR, SOCKS, BELTS, BANDANNAS, SWIM WEAR, BEACH COVERUPS, ROBES, LINGERIE, HATS, CAPS, VISORS, SHOES, SNEAKERS, SANDALS, AND BOOTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-7-1990; IN COMMERCE 12-7-1990.
OWNER OF U.S. REG. NOS. 2,158,107, 2,330,052 AND OTHERS.

SER. NO. 75-849,333, FILED 11-10-1999.

HENRY S. ZAK, EXAMINING ATTORNEY



LUCKY 000622